

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

Petition of Midwest Wireless
Communications, L.L.C. for Designation
as an Eligible Telecommunications
Carrier Under 47 U.S.C. § 214(e)(2)

**PROTECTIVE AGREEMENT AND
ORDER**

PREMISES:

1. This matter was referred to the Office of Administrative Hearings by the Minnesota Public Utilities Commission (the "Commission") for a contested case hearing in its *Order Requiring Additional Filings, Varying Time Period and Notice and Order For Hearing* issued July 5, 2002 in the above docket.

2. During the proceeding in this matter, Parties may file, request and use non-public data, as defined by Minnesota Statutes § 13.37 ("Trade Secret Information or Non-Public Information").

3. Minnesota Statutes § 14.60, subdivision 2 allows the Administrative Law Judge in a contested case to conduct a closed hearing to discuss non-public data, issue necessary Protective Agreement and Orders and seal all or part of the hearing record.

ACCORDINGLY, IT IS HEREBY AGREED AND ORDERED:

1. (a) Trade Secret Information and Non-Public Information. All Trade Secret Information and/or Non-Public Information shall be furnished pursuant to the terms of this Protective Agreement and Order, and shall be treated by all persons accorded access thereto pursuant to this Protective Agreement and Order as constituting confidential, competitive, trade secret, and business information, and shall be used solely for the purpose of this proceeding and solely in accordance with this Protective Agreement and Order, and shall not be used or disclosed for any other purpose or in any other manner. All documentary material claimed to be Trade Secret Information or Non-Public Information shall be so marked by the party by stamping each individual page with the designation "TRADE SECRET NOT FOR PUBLIC DISCLOSURE" or "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE AGREEMENT" or with words of similar import. Materials marked in accordance with the Minnesota Public Utilities Commission's August 18, 1999 Revised Procedures for Handling Trade Secret and Privileged Data ("Commission's Procedures") shall be appropriately marked for purposes of this Protective Agreement and Order. All copies of documents so marked will be made on colored paper. For purposes hereof, notes made pertaining to or prepared as the result of a review of Trade Secret Information or Non-Public Information shall be subject to the terms

of this Protective Agreement and Order. Any Trade Secret Information or Non-Public Information received in photographic, digital or electronic formats shall be identified as protected by the producing party by means appropriate to the medium and shall be handled by the recipient in a manner suitable to protect its confidentiality.

(b) Use of Trade Secret or Non-Public Information and Persons Entitled to Review. All Trade Secret Information or Non-Public Information made available pursuant to this Protective Agreement and Order shall be given solely to counsel for the requesting party or other authorized persons who are designated by counsel as being the party's experts or witnesses in this proceeding and who execute Exhibit A in a timely manner prior to their receipt of the Trade Secret Information and/or Non-Public Information. Trade Secret Information and/or Non-Public Information shall not be used or disclosed except for purposes of this proceeding. The Trade Secret Information and/or Non-Public Information may not be used or referenced in other proceedings in Minnesota or in other jurisdictions. Unless otherwise provided in this Protective Agreement and Order, all Trade Secret Information will be safeguarded and handled in accordance with the Commission's Procedures.

(c) Nondisclosure Protective Agreement and Order. Prior to giving access to Trade Secret Information and/or Non-Public Information as contemplated in paragraph (a)-(b) above to any expert or witness, whether or not such expert or witness is a person designated to testify in any such proceeding, counsel for the party seeking review of the Non-Public Information and/or Trade Secret Information shall deliver a copy of this Protective Agreement and Order to such person, and prior to disclosure such person shall agree in writing to comply with and be bound by this Protective Agreement and Order. In connection therewith, Non-Public Information and/or Trade Secret Information shall not be disclosed to any person who has not signed a Nondisclosure Agreement in the form which is attached hereto and incorporated herein as Exhibit A and until the 24-hour notice required by this paragraph has been given. The Exhibit A Nondisclosure Agreement shall require the person to whom disclosure is to be made to read a copy of this Protective Agreement and Order and to certify in writing that he or she has reviewed the same and has consented to be bound by its terms. The Nondisclosure Agreement shall contain the signatory's full name, permanent address and employer, and the name of the party with whom the signatory is associated. Such Nondisclosure Agreement shall be delivered to counsel for the providing party at least 24 hours, excluding weekends and holidays, prior to the expert or witness gaining access to the Non-Public Information and/or Trade Secret Information. If counsel for the providing party notifies the Administrative Law Judge of an objection within the 24 hours, no Non-Public Information and/or Trade Secret Information shall be provided to the expert or witness until so ordered by the Administrative Law Judge.

2. Challenge to Non-Publicity, Trade Secret Designation or Other Special Requests. This Protective Agreement and Order establishes a procedure for the expeditious handling of Non-Public Information and/or Trade Secret Information. It shall not be construed as an agreement or ruling on the discoverability, confidentiality or trade secret designation of any such information or document. Any party at any time upon ten (10) days prior notice may seek by appropriate pleading to have documents or other matters that have been designated as Non-Public

Information or Trade Secret Information removed from the protective requirements of this Protective Agreement and Order or to have them handled in a manner differently than described in this Protective Agreement and Order (either for greater or lesser confidentiality protections). If the confidential or trade secret nature of this information is challenged, resolution of the issue shall be made by the Administrative Law Judge or Commission after proceedings *in camera* which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such confidential or trade secret matter shall be present. The record of such *in camera* hearings shall be marked "TRADE SECRET NOT FOR PUBLIC DISCLOSURE" or "CONFIDENTIAL – SUBJECT TO PROTECTIVE AGREEMENT," unless the ALJ or Commission determines that the proceeding should not be classified as involving Trade Secret Information or Non-Public Information.

3. Use of Trade Secret Information and/or Non-Public Information in Comments/Pleadings. Where reference to Trade Secret Information and/or Non-Public Information is required in pleadings, cross-examinations, briefs, argument or motions, it shall be by citation of title or exhibit number or by some other nonconfidential description. Any further use of or substantive references to Trade Secret Information and/or Non-Public Information shall be placed in a separate "Non-Public" copy of the pleading or brief and submitted to the Commission pursuant to the terms of the Commission's Procedures. This "Non-Public" copy shall be served only on counsel of record (one copy each) who have signed a Nondisclosure Agreement. All the protections afforded in this Protective Agreement and Order apply to materials prepared and distributed under this paragraph.

4. Use of Trade Secret Information and/or Non-Public Information in Depositions. If, in the course of depositions, counsel for any party concludes that testimony or exhibits will involve Trade Secret Information and/or Non-Public Information, counsel shall request that the court reporter record such testimony in a confidential transcript that is marked "TRADE SECRET NOT FOR PUBLIC DISCLOSURE" or "CONFIDENTIAL – SUBJECT TO PROTECTIVE AGREEMENT." All Exhibits which have been marked as involving Trade Secret Information and/or Non-Public Information shall be attached to the confidential transcript and marked consistent with the Commission's Procedures. Each party has the right to identify a transcript or exhibits as including Trade Secret Information and/or Non-Public Information pursuant to this paragraph for up to three business days after the deposition is completed.

5. Use of Trade Secret Information or Non-Public Information in Hearings or Commission Meetings. The receiving party shall not use Trade Secret and/or Non-Public Information in a hearing without first (a) providing prior notice to the disclosing party regarding the information to be used and (b) conferring with the disclosing party regarding limitations or procedures that can be used to avoid disclosing the confidential aspects of the information at issue to persons not otherwise entitled to receive such information. If the parties cannot reach agreement regarding the use of such information, then the dispute shall be submitted to the Administrative Law Judge or the Commission before the information is used or publicly disclosed. Without limiting the foregoing, no party shall refer to Trade Secret and/or Non-Public Information on oral testimony, cross-examination or argument except in accordance with this paragraph.

6. Return. Unless otherwise ordered, all Trade Secret and/or Non-Public Information, including transcripts of any depositions to which a claim of "trade secret" status or

confidentiality is made, shall remain under seal, shall continue to be subject to the protective requirements of this Protective Agreement and Order, and, except as provided in Paragraph 10, shall be returned to counsel for the providing party within 30 days after final settlement or conclusion of the applicable matter including administrative or judicial review thereof, unless otherwise agreed upon by the party that provided the Trade Secret Information or Non-Public Information.

7. Preservation of Non-Publicity. All persons who may be entitled to receive, or who are afforded access to any Trade Secret and/or Non-Public Information by reason of this Protective Agreement and Order shall neither use nor disclose the Trade Secret and/or Non-Public Information for purposes of business or competition, or any other purpose other than the purposes of preparation for and conduct of these proceedings, and then solely as contemplated herein, and shall take reasonable precautions to keep the Trade Secret Information and/or Non-Public Information secure and in accordance with the purposes and intent of this Protective Agreement and Order.

8. Reservation of Rights. The parties hereto affected by the terms of this Protective Agreement and Order further retain the right to question, challenge, and object to the admissibility of any and all data, information, studies and other matters furnished under the terms of this Protective Agreement and Order in response to interrogatories, requests for information or documents or cross-examination on the grounds of relevancy or materiality.

9. Inadvertent Disclosure. No party shall have waived its right to designate any documents, data, information, studies, or other materials as Trade Secret Information or Non-Public Information by inadvertent disclosure, provided the disclosing party thereafter gives written notice to the recipient(s) of such information that it should have been designated as Trade Secret Information or Non-Public Information. From and after receipt of such notice, the previously disclosed information subsequently identified as Trade Secret Information or Non-Public Information shall be treated as Trade Secret Information or Non-Public Information for purposes of this Protective Agreement and Order.

10. Information Provided to State Agencies. The files of the Public Utilities Commission, the Office of Administrative Hearings, the Department of Commerce, and other state agencies containing trade secret data or otherwise protected information shall be treated as required by Minn. Stat. §§ 13.01 *et seq.* and 138.161 *et seq.* and shall not be subject to the return requirements of this Protective Agreement and Order.

ACCEPTED AND AGREED by the undersigned counsel on behalf of the parties:

Date:

**MIDWEST WIRELESS COMMUNICATIONS,
L.L.C.**

By _____
Scott J. Bergs (#284488)
Leonard, Street & Deinard
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402

Date:

MINNESOTA INDEPENDENT COALITION

By

Richard J. Johnson
Moss & Barnett, PA
4800 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

**CITIZENS TELECOMMUNICATIONS
COMPANY OF MINNESOTA, INC. AND
FRONTIER COMMUNICATIONS OF
MINNESOTA, INC.**

By

Kevin Saville
Associate General Counsel
Citizens Communications
2378 Wilshire Boulevard
Mound, MN 55364

IT IS SO ORDERED this 22nd day of July, 2002.

/s/ Steve M. Mihalchick

Steve M. Mihalchick
Administrative Law Judge

**EXHIBIT A
TO
PROTECTIVE AGREEMENT AND ORDER**

I, the undersigned, hereby acknowledge that I have read the attached Protective Agreement and Order dated July 22, 2002, in Minnesota Public Utilities Commission Docket No. P-573/AM-02-686, OAH Docket 12-2500-14980-2, and understand the terms thereof and agree to be bound by all such terms. Without limiting the generality of the foregoing, I agree not to disclose to any person or entity not authorized to receive materials designated "TRADE SECRET – NOT FOR PUBLIC DISCLOSURE" or "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE AGREEMENT" under the terms of said Protective Agreement and Order, or any copies of extracts of information derived therefrom, which have been disclosed to me. I further agree to use any such materials disclosed to me solely for the purpose of this proceeding and for no other purpose.

I hereby submit myself to the jurisdiction of the Office of Administrative Hearings in Minnesota and the Minnesota Public Utilities Commission for the purpose of enforcing said Protective Agreement and Order.

Date: _____, 2002

Signature

Type or Print Name

Address

Name of Employer

Name of Party